

# BOARD OF REGISTERED NURSING

## Agenda Item Summary Nursing Practice

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**AGENDA ITEM:** 11.1

**DATE:** November 21, 2008

**ACTION REQUESTED:** Approve/Not Approve: Revised Statement “Administration of Insulin in Schools by Unlicensed Personnel”

**REQUESTED BY:** Geri Nibbs, RN, MN  
Nursing Education Consultant

### **BACKGROUND:**

At its November 30, 2007, meeting, the Board approved the statement, “Administration of Insulin in Schools by Unlicensed Personnel,” which was developed in response to the California Department of Education (CDE) legal advisory on rights of students with diabetes in K – 12 California public schools. The CDE’s legal advisory resulted from the diabetes case settlement agreement from K.C. et al v. Jack O’Connell, et al.

CDE issued a questions and answers fact sheet on the case settlement in August 2007, which was revised in August 2008. The revised document continues to advise that unlicensed persons may administer insulin under specified conditions based on “well-established legal principles under federal law.” The revision, in addition to making grammatical and formatting changes, includes the following substantive changes:

1. States that it is always preferable for a nurse to be available to administer insulin and that the local lead agency (LEA) should endeavor to have a nurse to provide the health-related services.
2. Requires that if no school nurse is available, reasonable efforts must be used to contract with appropriately licensed person. Additionally, the local education agency (LEA), in consultation with its own legal counsel, must thoroughly explore and evaluate availability of appropriately licensed persons before training and using a voluntary unlicensed person to administer insulin.
3. Expands who may supervise registered nurses (who are not school nurses) and licensed vocational nurses from school physician or school nurse to include “other appropriate person.”
4. Clarifies that the effect of the CDE legal advisory is not affected by the current litigation filed by the American Nurses Association.
5. Affirms that the legal advisory does not obligate or require nurses to train or supervise voluntary persons to administer insulin, and defers to the locally-elected school board in the matter.

The proposed revised Board’s statement is in response to the CDE’s revision of the Q&A fact sheet. The revision consists of three (3) changes as follows:

1. Deletes “Note” stating that the legal advisory was unclear and that unlicensed individuals (category 8) should only be used as a last resort. The revised legal advisory addresses this issue.
2. Specifies that licensed vocational nurses practice under the direction of a registered nurse or physician. (Business and Professions Code 2859).

3. Clarifies that registered nurses may only train and supervise unlicensed individuals in the performance of nursing functions for which there is statutory authority, and that unlicensed persons cannot train or supervise other unlicensed person to perform nursing duties without statutory authority to do so.

Attached are the following documents:

1. Proposed revised Board statement with changes highlighted in yellow.
2. Revised CDE Q&A fact sheet with significant changes highlighted in yellow.

**NEXT STEP:**

Place on Board Agenda

**FINANCIAL  
IMPLICATIONS,  
IF ANY:**

None

**PERSON TO CONTACT:**

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## **ADMINISTRATION OF INSULIN IN SCHOOLS BY UNLICENSED PERSONNEL California Department of Education Case Settlement, K.C. et al. v. Jack O'Connell, et al.**

The Board of Registered Nursing (BRN) is a state consumer protection agency and is statutorily authorized to interpret, implement, and enforce the Nursing Practice Act and its regulations. The Board's highest priority, as stated in statute<sup>1</sup> and reaffirmed in its mission statement, is protection of the public.

**Background:** Students with diabetes have encountered numerous problems in obtaining diabetes-related services, including insulin administration, to which they are legally entitled. The California Department of Education (CDE) issued a "Legal Advisory on the Rights of Students with Diabetes in California's K-12 Public Schools" ([www.cde.ca.gov/ls/he/hn/legaladvisory.asp](http://www.cde.ca.gov/ls/he/hn/legaladvisory.asp)) pursuant to a settlement agreement in a lawsuit brought by parents of diabetic children and the American Diabetes Association. The advisory reminds school districts of their legal obligation to provide insulin administration and other services to students with diabetes-related disabilities and specifies who may administer insulin.

**BRN Position:** The BRN concurs with CDE that students must be provided all services to which they are legally entitled and reminds school nurses that, in their role as client advocate, they are required to work with appropriate school and districts administrators to ensure that such services are provided by legally authorized personnel.

The advisory identifies seven categories of persons authorized by California law to administer insulin in public and charter schools:

1. Self administration by the student, with authorization of the student's licensed health care provider and parent/guardian;
2. School nurse or school physician employed by the local educational agency (LEA);
3. Appropriately licensed school employee (i.e., a registered nurse or a licensed vocational nurse) who is supervised by a school physician or school nurse;
4. Contracted registered nurse or licensed vocational nurse from a private agency or registry, or by contract with a public health nurse employed by the local county health department;
5. Parent/guardian who so elects;
6. Parent/guardian designee, if parent/guardian so elects (volunteer);
7. Unlicensed voluntary school personnel with appropriate training, but only in an emergency.

The BRN agrees with CDE's opinion regarding individuals authorized by California law to administer insulin. However, the legal advisory asserts that there is a conflict between federal and state law and, to resolve the conflict, adds an eighth category of individuals authorized to administer insulin to eligible students under specified conditions:

"Voluntary school employee who is unlicensed but who has been adequately trained to administer insulin pursuant to the student's treating physician's orders as required by the Section 504 Plan or the individual education plan (IEP)." (Note: In the legal advisory, it is unclear that individuals in category 8 can only be used as a last resort. However, in both his press conference introducing the settlement agreement and at a meeting with the BRN and nursing organizations, Superintendent Jack O'Connell stated that school districts should exhaust all other legal options before training unlicensed personnel in category 8.)

<sup>1</sup> Business and Professions (B&P) Code § 2708.1

There is disagreement with CDE's position that federal law permits the administration of insulin by unlicensed personnel as specified in category eight. Administration of medications, including insulin, is a nursing function<sup>2</sup> that may not be performed by an unlicensed person unless expressly authorized by statute<sup>3</sup>. The American Nurses Association and American Nurses Association-California have filed a lawsuit challenging CDE's position.

**School Nurse Practice:** Until the issue is resolved, the school nurse is required to adhere to the Nursing Practice Act and should:

1. Work collaboratively with the local educational agency, school district, and school site administrator to ensure that students with diabetes receive all health-related services to which they are legally entitled, including insulin, and that services are provided by persons legally authorized to do so pursuant to California law. To comply with the law, it may be necessary to use contracted licensed staff, i.e., registered nurses/public health nurses or licensed vocational nurses. The licensed vocational nurse must practice under the direction of a registered nurse or physician when providing nursing services<sup>4</sup>; the licensed vocational nurse is not an independent practitioner. The expense of services being provided by a licensed person is not an acceptable rationale for training an unlicensed person.
2. Practice in accordance with the Standards of Competent Performance<sup>5</sup>, which require that the school nurse/contracted registered nurse conduct an assessment and formulate a plan of care for the client/student, safely and competently perform nursing care; and determine if nursing care can be assigned or delegated to subordinates. If subordinates are included in the plan of care, they must be legally authorized to perform the task, appropriately prepared/trained, and capable of safely performing the task. The school nurse must effectively supervise the care being provided by subordinates. A registered nurse cannot train or supervise a person to perform a nursing function if the person is not legally authorized to perform the function, nor can unlicensed persons train or supervise other unlicensed persons to perform nursing functions without statutory authority to do so.
3. Notify the CDE and the BRN if instructed to train an unlicensed person to administer insulin and an exhaustive effort has not been made to have an appropriately licensed person administer it.

Board of Registered Nursing:

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<sup>2</sup> Business and Professions Code, Section 2725(b)(2)

<sup>3</sup> Business and Professions Code, Sections 2795, 2799

<sup>4</sup> Business and Professions Code, Section 2859

<sup>5</sup> California Code of Regulations, Section 1443.5

## Questions & Answers on K.C. Settlement Agreement

These questions and answers address frequently asked questions about the diabetes case settlement agreement for *K.C. et al v. Jack O'Connell*.

### Revised Questions and Answers on Diabetes Case Settlement K.C. et al. v. Jack O'Connell, et al.

#### Background

There has been a significant increase in diabetes among school children, exacerbated by the epidemic of obesity. The Centers for Disease Control (CDC) estimates that 30 percent of children born in 2000 will develop diabetes sometime in their lifetime.

Diabetes is managed on an individual basis, according to a physician's recommendations. When a disabled student needs related medical services as a result of diabetes, his or her Individualized Education Program (IEP) or Section 504 Plan may require the administration of insulin during the school day or at school-related activities. Students in upper elementary grades and above often manage their diabetes themselves, monitoring blood sugar levels and injecting insulin as necessary. Where a student is unable to self-manage diabetes, school nurses or other school personnel help children monitor and manage their diabetes.

Across California's more than 1,000 school districts, there have been differing interpretations of a school district's responsibility in the area of assisting a student with diabetes who is entitled to services pursuant to an IEP or Section 504 plan, including the administration of insulin. Advocates for children with diabetes sued the California Department of Education (CDE) claiming this to be a widespread problem that was not being sufficiently addressed by the state, allegedly resulting in students not being provided with treatment at school, missing out on educational opportunities such as field trips in order to get required services, or parents being required to miss work in order to administer insulin to their child during the school day. There was some evidence of inconsistent practices at the district and school level. The CDE and plaintiffs entered into mediation to settle this issue and jointly agreed to the terms of the recent settlement agreement.

#### 1. What does this settlement agreement do?

It spells out the legal responsibilities of a local education agency (LEA) in cases when a student is identified, by an IEP or a 504 team, for special education and/or related services as a result of diabetes, and when that student requires administration of insulin during the school day. CDE has sent a [Legal Advisory](#) to all school districts reminding them of the legal rights of students with disabilities involving diabetes.

The advisory makes clear that school districts have an obligation to provide insulin administration and related services to eligible students who are not able to self-administer. It spells out who may administer insulin at a school, and it requires that the local education agency must provide training in diabetes management to volunteer staff members who are not licensed health care professionals in cases when a school nurse or other licensed professional is not available.

The settlement makes clear that a district must meet the individual education needs of each child who has a disability involving diabetes and may not operate on the basis of a blanket policy regarding the administration of health services, such as across-the-board limitations on the types of services the district will provide. Therefore, the settlement makes clear, as

does the Legal Advisory, that districts must ensure that eligible students are administered insulin during the school day as required by the student's IEP or Section 504 plan.

2. Which students are affected by the settlement?

A student with diabetes who is disabled under Section 504 of the Rehabilitation Act of 1973 and/or the Individuals with Disabilities Education Act (IDEA) and whose IEP or Section 504 Plan requires medical services related to the disability of diabetes.

Under the settlement, local education agencies must affirmatively seek to find and evaluate all students eligible for such services under federal law.

3. What if a student requires insulin administration and no school nurse is available?

Financial burden or other difficulty to a local education agency is not a valid defense for not providing school health services required under a child's IEP or Section 504 Plan. If no school nurse is available, the district must use reasonable efforts to contract with a registered nurse or licensed vocational nurse from a private agency or registry, or to contract with a public health nurse through the county health department (see Question 4 below). If an LEA has determined that a nurse is not available, then it must train a voluntary school employee to provide such services.

4. Who may administer insulin to students with diabetes under section 504 and the IDEA?

According to the Legal Advisory, only the following seven categories of persons are expressly authorized under state law to administer insulin in schools:

1. The student, with authorization of the student's licensed health care provider and parent/guardian.
2. A school nurse or school physician employed by the LEA.
3. An appropriately licensed school employee such as registered nurse or licensed vocational nurse, supervised by a school physician, school nurse, or other appropriate person.
4. A contracted registered nurse or licensed vocational nurse from a private agency or registry, or by contract with a public health nurse through the county health department.
5. A parent/guardian who chooses to administer the insulin.
6. A designee of the parent guardian who volunteers to administer the insulin and who is not a school employee.
7. An unlicensed voluntary school employee with appropriate training, in emergencies.

If an LEA has made reasonable efforts to identify someone from categories 2-4 but individuals from these categories are not available, then the LEA may recognize and implement category 8 below in order to meet its federal obligations under the IDEA or Section 504:

8. An LEA may train a voluntary school district employee to administer insulin to a student with diabetes during school and school-related activities if his or her IEP or

Section 504 Plan so requires and if no person expressly authorized by categories 1-7 is available.

As explained in Question 5, an LEA is required to provide services, and it may not pressure students to self-administer or parents to administer insulin or find a designee to do so under categories 1, 5 and 6. However, an LEA must thoroughly explore and evaluate categories 2-4 prior to determining that expressly authorized persons are not available and that it must resort to category 8 pursuant to requirements in an IEP plan or Section 504 Plan. This evaluation must not delay the timely provision of services documented in IEPs or Section 504 Plans.

An LEA should consult with its own counsel about whether it has made sufficiently reasonable efforts to satisfy categories 2-4. What is reasonable will depend on many factors in each particular circumstance, such as the size of the school/district, urban/rural geography, availability of contract registries/nurses in the area, etc.

It always is preferable for a nurse to be available to administer insulin. Thus, LEAs should endeavor to have a nurse who can administer insulin when needed in accordance with the treating physician's orders and should make every effort to hire a nurse to provide these related health care services.

5. May a local education agency require a parent or other relative to come to school to administer insulin?

No. A district must provide the services needed by the child during the course of the regular school day and during school-sponsored activities.

6. How will CDE ensure that students with diabetes get the special educational services they need?

CDE has notified school districts of these legal responsibilities and will monitor districts for compliance, according to the terms of the settlement agreement.

7. Has the effect of the Legal Advisory been stayed pending the outcome of litigation filed by the American Nurses Association?

No. At its meeting on November 30, 2007, the Board of Registered Nursing (BRN) adopted a statement in which it disagreed with the Legal Advisory's recognition of category 8. The BRN states that the administration of insulin by unlicensed personnel violates the state Nursing Practice Act and recognizes that a lawsuit challenging the Legal Advisory has been filed by the American Nurses Association (ANA) and its California affiliate. No injunctive relief has been ordered by the trial court.

CDE believes that the Legal Advisory sets forth well-established legal principles under federal law: namely, the IDEA and Section 504. Thus, CDE urges districts to follow those principles closely with respect to all eligible students with disabilities involving diabetes whose IEPs or Section 504 plans require the administration of insulin during the school day or at school-related activities. It seems readily apparent that any district not implementing an IEP or Section 504 plan would risk litigation under those statutory schemes — the very reason that the CDE issued the Legal Advisory reminding districts of those federal obligations in the context of the disability of diabetes. In addition, as noted above, the trial court has not issued any injunctive relief against the CDE in this regard.

Furthermore, ANA's lawsuit and BRN's statement cover only one aspect of the settlement and the Legal Advisory. The rest of the Advisory (which, for example, reminds districts that children with diabetes must receive timely administration of insulin and cannot be sent to a different school because they have diabetes) has not been challenged.

8. Are nurses required to train or supervise volunteers whom the LEA trains to administer insulin pursuant to category 8?

The Legal Advisory does not place any obligation/requirement on nurses to train or to supervise volunteers, and does not otherwise specify who would be responsible for providing such training since this is a matter for the locally-elected school board to decide, taking into account the relevant bargaining agreement(s) and legal principles. The American Diabetes Association (one of the plaintiffs in the *K.C.* litigation) has information about training available, [Diabetes Care Tasks At School: What Key Personnel Need To Know](#) (Outside Source). In addition, the California School Boards Association recently discussed the Legal Advisory and the issue of training in a [Policy Brief](#) (PDF; Outside Source).

Last Reviewed: Tuesday, August 12, 2008

California Department of Education (<http://www.cde.ca.gov/ls/he/hn/diabllegalqa.asp>)

# BOARD OF REGISTERED NURSING

## Agenda Item Summary Nursing Practice

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**AGENDA ITEM:** 11.2

**DATE:** November 21, 2008

**ACTION REQUESTED:** Approve/Not Approve: BRN Statement “Clinical Learning Experiences: Nursing Students”

**REQUESTED BY:** Janette Wackerly, MBA, RN  
Nursing Education Consultant

**BACKGROUND:**

Business and Professions Code § 2729 Services by Student Nurses, states that nursing services may be rendered by a student when these services are incidental to the course of study and the nursing student is enrolled in a board approved program. The Board of Registered Nursing is statutorily authorized to interpret, implement, and enforce the Nursing Practice Act and its regulations. The statement on “Clinical Learning Experiences Nursing Students” is proposed to clarify the authority for nursing practice provided by a student nurse.

It has come to the boards attention that their have been restrictions placed on nursing student’s ability to perform clinical functions especially those involving medication administration in acute care hospitals. This information was obtained from California acute care hospitals and California registered nursing educational programs. There has been an effort to categorize nursing students enrolled in a board approved nursing program as unlicensed assistive personnel. There were questions about whether the nursing student could access a medication dispensing machine, Pysis, in the processes related to administering medication to assigned patients. Questions were also raised about supervision of nursing students during the administration of medications.

**NEXT STEP:** Place on Board Agenda

**FINANCIAL  
IMPLICATIONS,  
IF ANY:**

None

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## Clinical Learning Experiences Nursing Students

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The Board of Registered Nursing is statutorily authorized to interpret, implement, and enforce the Nursing Practice Act and its regulations. Business and Professions Code § Section 2729 statutorily authorizes that nursing services may be rendered by a student nurse when these services are incidental to the course of study when the nursing student is enrolled in a board-approved nursing program.

**BRN Position:** Nursing faculty of a California board approved nursing program is authorized by the above law to initiate and continue to allow nursing student's clinical education functions including administration of medication. The role of the nursing faculty is to provide direct and indirect supervision of nursing students in all clinical activities. The Board of Registered Nursing has relied on Business and Professions Code Section § 2729 and does not consider nursing students as unlicensed assistive personnel for the purpose of clinical nursing education.

Faculty determines the amount of supervision to provide to any individual nursing student. When determining the appropriate level of supervision, faculty must consider the severity and stability of the assigned patient, the patient's condition, as well as the student's competency and ability to adapt to changing situations in the clinical setting. Faculty should also consider the types of treatments, procedures, and medications to be administered to the patient. When engaged in clinical learning experiences the nursing student is under the supervision of the clinical faculty and the RN in the facility. Both the clinical faculty and the RN in the clinical facility are responsible for the quality of care delivered by students under their supervision.

Expanding clinical technology such as electronic medical records, Pyxis medication distribution systems, and bar-coding electronic medication administration processes require faculty and nursing students to attend training sessions allowing them to gain the knowledge necessary to use these systems. The board expects nursing faculty to ensure that the learning experiences chosen provide the student with the opportunity to develop those skills necessary to ensure that they will become safe, competent practitioners. Since these technologies are here today and will be a future part of healthcare delivery, faculty and nursing students must have hands on experiences with these systems while learning to provide registered nursing care to patients.

If questions arise regarding RN practice or nursing student authority to perform registered nursing functions while enrolled in a California approved nursing program, do not hesitate contacting the Board of Registered Nursing at [www.rn.ca.gov](http://www.rn.ca.gov).